

HOUSE BILL 493

By Sargent

AN ACT to amend Tennessee Code Annotated, Section 6-55-202 and Title 67, relative to taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 5, Part 1, is amended by adding the following language as a new Section 67-5-105:

67-5-105. As used in this chapter:

(1) "Collector" means in the case of any tax entity other than a county that collects its own taxes, assessments, or other charges secured by property, the officer of such tax entity responsible for collecting such taxes, assessments, or charges;

(2) "Tax entity" includes counties, cities, metropolitan governments, municipal corporations, quasi-municipal corporations, political subdivisions having authority to levy a property tax; and

(3) "Taxpayer" means any owner of property subject to taxation or any party liable for property taxes.

SECTION 2. Tennessee Code Annotated, Section 67-5-2401, is amended by deleting subsection (a) in its entirety and by substituting instead the following language:

(a) As a preliminary step toward enforcing the lien for uncollected property taxes, the trustee or collector shall cause to be inserted, once a week for two (2) consecutive weeks in the month of January, in a newspaper of general circulation as defined in § 2-1-104 or one (1) or more newspapers published or widely distributed in the county, a notice as follows:

You are advised that after February 1, additional penalties and costs will be imposed in consequence of suits to be filed for enforcement of the lien for property taxes for prior tax years; until the filing of such suits, taxes may be paid in my office.

County Trustee (or other Collector)

(b) The cost of publication shall be paid by the tax entity, and, if no newspaper is published in the county, notice shall be posted on the courthouse door.

SECTION 3. Tennessee Code Annotated, Section 67-5-2402, is amended by deleting subsection (a) in its entirety and by substituting instead the following language:

(a) The trustee or collector shall likewise prepare from the rolls held by the trustee's or the collector's office, a list of taxpayers and identification of property for which property taxes are delinquent, as of June 1 of the current calendar year, and include the following notice or equivalent language in the current tax bills sent to property owners appearing on either the trustee's or the collector's list or the list received from the clerk of court pursuant to § 67-5-2403:

IN ADDITION TO THIS AMOUNT, YOU OWE BACK TAXES. CONTACT THIS
OFFICE IMMEDIATELY OR YOUR PROPERTY MAY BE SOLD.

County Trustee (or other Collector)

SECTION 4. Tennessee Code Annotated, Section 67-5-2403, is amended by deleting the section in its entirety and by substituting instead the following language:

Additionally, it is the duty of the clerk of any court in which suits for the enforcement of property tax liens have been filed, if requested by the trustee, collector or by the attorney prosecuting the suit, to annually provide to the county trustee such requesting party or parties, no earlier than June 1 nor later than July 1, a complete list of unpaid delinquent taxes pending in the court taxpayers as of June 1 of the current

calendar year, with identification of the property involved in such suits, and the years for which taxes are delinquent.

SECTION 5. Tennessee Code Annotated, Title 67, Chapter 5, Part 24, is amended by adding the following language as a new Section 67-5-2422:

67-5-2422. The legislative body of every county having a charter form of government or metropolitan form of government and every municipality which has adopted home rule in accordance with Article XI, Section 9 of the Tennessee Constitution, is authorized to establish any percentage to be applied as interest, penalties, court costs, attorney fees, and fees to provide compensation for the prosecution of the delinquent taxes, and is authorized to apply such percentages on its own accord, §§ 67-5-2010, 67-5-2404, 67-5-2410, and 67-5-2501 notwithstanding. If such a county or municipal government has not elected to establish and to specifically identify its own percentages, §§ 67-5-2010, 67-5-2404, 67-5-2410, and 67-5-2501 shall remain in effect until the legislative body of the county or municipal government so acts.

SECTION 6. Tennessee Code Annotated, Section 67-5-1806, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) All taxes assessed against real and personal property in this state shall be barred, discharged and uncollectible after the lapse of ten (10) years from April 1 of the year following the year in which such taxes become delinquent, whether suit be brought within that time or not to collect the taxes, and whether this § 67-5-1806 be pleaded in bar of such collection or not, unless the property in question be struck off and sold within such period of ten (10) years.

(b) The bar against collection provided in subsection (a) shall be tolled:

(1) As to taxes at issue in an administrative appeal before the state board of equalization, from the date of filing the appeal through issuance of the final assessment certificate and during the pendency of any judicial review thereof;

(2) During the pendency of any appeal of an action to collect or enforce a lien for unpaid taxes;

(3) During the pendency of any recovery action under title 67, chapter 1, part 9;

(4) During the pendency of any suit to invalidate a tax sale; or

(5) During the pendency of any bankruptcy or receivership proceedings affecting the taxing entity's collection rights or the term of any payment plan ordered in such proceedings.

SECTION 7. Tennessee Code Annotated, Section 67-5-2405, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) The attorney shall after February 1, and not later than April 1, file suits in the circuit or chancery court of the county for the collection of delinquent land taxes due the state, county and municipality, as well as the interest, penalties, and costs attached to and a part of such taxes, which taxes, interest, penalties, and costs are declared a lien upon the land; and, for the enforcement of this lien, suits shall be brought in the name of the county, in its own behalf and for the use and benefit of the state, municipality or other tax entity that has certified a delinquent tax list, or in the name of any such tax entity that has certified a delinquent tax list, in its own behalf and for its own use and benefit.

(b)

(1) The complaint shall be in substance and form as other complaints for the enforcement of liens and may be filed against and contain the names of all the delinquent taxpayers in the county, and the fact that the complaint contains

the names of more than one (1) defendant shall not be considered by the court multifarious, or a misjoinder of parties.

(2) Additional defendants and delinquent taxes may be added to the suit as a matter of right upon the filing of a notice on behalf of the complainant to add additional defendants and without the necessity of amending the complaint. Upon the filing of such notice, the additional defendants shall be served with process pursuant to the Rules of Civil Procedure and § 67-5-2415.

(c) Suits for the collection of delinquent taxes are to be prosecuted to a conclusion as soon as practicable, and for this purpose proceedings in respect thereto are to be accorded priority by the court.

(d) At any time after suit has been filed pursuant to subsection (a), whether delinquent tax defendants have or have not been served with a copy of such suit, the court may amend this suit by adding delinquent taxes that became delinquent more recently than the taxes being enforced pursuant to subsection (a) of this section.

SECTION 8. Tennessee Code Annotated, Section 6-55-202, is amended by deleting the section in its entirety and by substituting instead the following language:

6-55-202. It is lawful for any incorporated municipality to sue in the chancery court of the county in which it is located for taxes due the municipality upon real estate, whenever the taxes are past due and unpaid. The fact that the complaint contains the names of more than one (1) defendant shall not subject the complaint to an objection for misjoinder by reason of the distinct interests the several defendants have in the properties proceeded against.

SECTION 9. Tennessee Code Annotated, Section 67-5-2003, is amended by deleting subsection (a) in its entirety and by substituting instead the following language;

(a) All delinquent personal property taxes, including but not limited to, public utility personal property taxes, may be immediately collected by the county trustee or collector, with the assistance of the delinquent tax attorney selected pursuant to § 67-5-2404 or § 67-5-2001, if such delinquent tax attorney's assistance is requested by the trustee or collector. The tax books in the hands of the trustee or collector and the delinquent lists furnished to deputy trustees or the collector's deputies, or the sheriff or constables in any county where the taxpayer or any property liable for the taxes may be found, or the delinquent tax attorney, shall have the force and effect of a judgment and execution from a court of record, and shall be ample authority for the officers or delinquent tax attorney having such taxes for collection to distrain and sell a sufficient amount of the personal property to satisfy the delinquent taxes, interest, penalties, costs and attorneys' fees. However, leased personal property assessed to a lessee shall not be distrained and sold pursuant to this section.

SECTION 10. Tennessee Code Annotated, Section 67-5-2003, is amended by deleting subsection (g) and substituting instead the following language:

(g)

(1) The trustee or collector may turn over the delinquent list thirty (30) days after such taxes become delinquent to the delinquent tax attorney, selected pursuant to § 67-5-2404 or § 67-5-2001, to file suit to collect delinquent personal property taxes, any pending suit to collect real property taxes, as part of a separate mass lawsuit pursuant to the procedures set forth in this chapter, or as a separate lawsuit. Such can be done without having first issued a distress warrant.

(2) In the event the trustee or collector turns over the delinquent list prior to the mailing of the notice pursuant to § 67-5-2402, the trustee or collector shall

be required to forward written notice by first class mail to the last known property owner at least ten (10) days before the delinquent list is turned over to the delinquent tax attorney.

(3) If the procedure in this subsection (g) is used, the trustee or collector is also authorized, as with real property tax records, to turn over records to the clerk of court.

(4) A judgment obtained against a delinquent taxpayer may be enforced as a lien on the property, or as any other judgment, including garnishment or sale of property by the sheriff.

(5) Following entry of a personal judgment for delinquent personal property taxes, a tax entity may enter into a written agreement for the payment of such judgment in installments, pursuant to § 26-2-218, on such terms as the tax entity may deem appropriate, provided that such agreement must provide for payment of all taxes, interest, penalties, and costs in full, including any interest and penalties that accrue during the term of the installment payments.

(6) Any tax entity may file suit to collect any other taxes it is authorized by law to collect thirty (30) days after such taxes become delinquent, as part of any pending suit to collect property taxes, or as a separate mass lawsuit pursuant to the procedures set forth in this chapter.

SECTION 11. Tennessee Code Annotated, Section 67-5-2003, is amended by adding the following language as a new subsection (i):

(i) Delinquent public utility taxes may not be immediately collected under this section if the local assessment includes any real property. The trustee or collector must confirm with the comptroller of the treasury whether the public utility company's local assessment includes any real property.

SECTION 12. Tennessee Code Annotated, Section 67-5-2404, is amended by adding the following language as a new subsection (d):

(d) If a taxpayer or other adverse party to the tax entity appeals a judgment or other order of the trial court in an action to collect or enforce a lien for unpaid taxes, or files suit for recovery pursuant to title 67, chapter 1, part 9, or to set aside a tax sale pursuant to § 67-5-2504, the court may, in its discretion, and upon the tax entity prevailing in such action, award reasonable attorneys' fees in addition to the compensation set forth in this section. Any request for such fees shall be supported by affidavit and such fees shall become additional expenses of the tax suit for the purposes of § 67-5-2410(d), and shall be secured by the lien in favor of the tax entity as costs accruing on the taxes pursuant to § 67-5-2101(a). Nothing in this subsection shall be construed as authorizing an award of attorney's fees in favor of a taxpayer or other adverse party to the tax entity.

SECTION 13. Tennessee Code Annotated, Section 67-5-2103, is amended by deleting the section in its entirety and by substituting instead the following language:

The whole proceeding for the enforcement of property tax liens, from the assessment to sale for delinquency, shall be a proceeding in rem, and shall not be invalid on account of such land having been listed or assessed for taxation to anyone as owner or owners or to any person or persons not the owner or owners or to unknown owner or owners.

SECTION 14. Tennessee Code Annotated, Section 67-5-2409, is amended by designating the existing language as subsection (a), and by adding the following language as a new subsection (b):

(b) At any time after suit has been filed, whether delinquent tax defendants have or have not been served with a copy of such suit, the court may amend the suit by

adding delinquent taxes that became delinquent more recently than the taxes being enforced pursuant to subsection (a). Once amended, all delinquent taxes, both delinquent prior to filing the complaint and added later by amendment, shall be included in the first bid submitted to purchase the property at the tax sale. Amendment of the suit to include more recent delinquent taxes owed shall not require the issuance of leading process and formal service upon the defendant or defendants, as all property owners are already on notice pursuant to this title that taxes are due every year and become delinquent, if not paid by March 1 of the following year.

SECTION 15. Tennessee Code Annotated, Section 67-5-2415(e), is amended by deleting subdivision (1) in its entirety and by substituting instead the following language:

(1) The return of the receipt signed by the defendant, spouse, or other person deemed appropriate to receive summons or notice as provided for in the Rules of Civil Procedure, or its return marked "refused," "unclaimed", or other similar notation, as evidenced by appropriate notation of such fact by the postal authorities, and filed as a part of the record by the clerk, with notation on the docket of the true facts, shall be evidence of personal notice.

SECTION 16. Tennessee Code Annotated, Title 67, Chapter 5, Part 24, is amended by adding the following language as a new Section 67-5-2423:

67-5-2423. A delinquent tax roll, certified by the appropriate collecting official, shall constitute prima facie evidence that the underlying tax assessment has become conclusively established pursuant to § 67-5-1329 or § 67-5-1401, that each person charged with a duty relating to the imposition of the tax has complied with all requirements of law, and that the tax, including all applicable penalties, interest, costs, and fees, remains due and owing, and constitutes a good and valid lien on the subject property, as well as a personal liability of the taxpayer.

SECTION 17. Tennessee Code Annotated, Section 67-5-2502, is amended by deleting the language "(d)" and substituting instead the language "(e)" and further amended by adding the following language as a new subsection (d) and by designating the current subsection (d) as subsection (e):

(d) A tax sale notice, which shall be the same or substantially the same as the advertised notice, may be recorded in the register of deeds' office for the county in which the property is located upon the setting of the tax sale date. The recording cost shall be divided between the parcels of land listed in the tax sale notice and added as an additional court cost to each such parcel of land. This tax sale notice shall be recorded for informational purposes only and no release shall be required.

SECTION 18. Tennessee Code Annotated, Section 67-5-2801, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) The trustee or collector may request the delinquent tax attorney to seek court approval in order to waive the enforcement and collection of all, but not a portion of, industrial and commercial personal property taxes, penalties, interest, attorney fees and costs. All of the following must be determined and attested to by the trustee or collector before a court may approve a waiver:

- (1) The taxpayer has ceased all business operations;
- (2) No personal property subject to the tax can be found; and
- (3) Neither fraud nor an intention to avoid payment of the taxes on the part of the taxpayer caused the circumstances giving rise to such waiver.

(b) In order to waive the enforcement and collection of public utility personal property taxes, including penalties, interest, attorney fees and costs, the trustee or collector must first confirm with the comptroller of the treasury that the public utility's local assessment only includes personal property and does not include any real

property. If the public utility is still operating, then no waiver may be requested or approved even if the local assessment only includes personal property and no personal property can be found in the trustee's or the collector's jurisdiction. If the public utility has ceased all operations and the local assessment does not include any real property, then the trustee or the collector may request a waiver in accordance with subdivisions (a)(1)-(3).

(c) The trustee or collector is required to submit a report to the chief executive officer of the local government and the county assessor of all waivers approved by the court when no delinquent tax lawsuit has been filed. The report must contain the taxpayer's name and amount of taxes, penalties, interest, attorney fees, and costs waived. The waivers approved by the court under this subsection are to be included and written as a credit in the monthly settlement and annual statement in accordance with §§ 67-5-1903 and 67-5-1904.

(d) With respect to delinquent personal property taxes being waived under this section, for which the delinquent lawsuit has been filed, the court having jurisdiction of the delinquent tax lawsuit may, upon motion by the delinquent tax attorney and a finding that the factors outlined in subdivisions (a)(1)-(3) or subsection (b) exist, order the waiver of enforcement and collection of all, but not a portion of, such personal property taxes, penalties, interest, attorney fees and costs.

SECTION 19. Tennessee Code Annotated, Section 67-5-2501, is amended by deleting subdivision (a)(2) and subdivision (b)(2) in their entirety and by substituting instead the following language in each such subdivision:

(2) At all sales, the clerk of the court, acting for a tax entity prosecuting the suit, shall bid the debt ascertained to be due for taxes, interest, penalties, and the costs and fees incident to the collection thereof, where no other bidder offers the same or larger

bid; provided, that, when the legislative body of a tax entity determines that the environmental or other liability risks are such that it is not in the best interests of the tax entity for a minimum bid to be offered at the tax sale, the clerk shall not offer a bid on the property at the tax sale.

SECTION 20. Tennessee Code Annotated, Section 67-5-2506, is amended by inserting the language "or other liability" in subdivisions (a)(2) and (b)(2) between the language "poses an environmental" and the word "risk".

SECTION 21. Tennessee Code Annotated, Section 67-5-2504, is amended by deleting subsection (d) in its entirety and by substituting instead the following language:

(d)

(1) A suit shall be commenced within one (1) year from the date the cause of action accrued, which is the date of the entry of the order confirming the tax sale.

(2) The statute of limitations to invalidate the sale of any tax title shall be one (1) year as set forth in subdivision (1) of this subsection, except that it may be extended to one (1) year after the plaintiff discovered or with the exercise of reasonable due diligence should have discovered the existence of such cause of action.

(3) In no event shall any action to invalidate any tax sale title be brought more than three (3) years after the entry of the order confirming the tax sale.

(4) This subsection (d) shall not be construed to prevent or delay issuance of an order quieting title to land at the suit of a delinquent tax sale purchaser. After expiration of the period of redemption provided in § 67-5-2702, the delinquent tax sale purchaser may file suit to quiet title, notwithstanding the deadline for tax sale challenges provided in this subsection (d).

(5) Nothing in this subsection (d) shall limit the time in which a motion for excess proceeds may be filed pursuant to § 67-5-2707.

SECTION 22. Tennessee Code Annotated, Section 67-5-2507(a), is amended by deleting the language "to sell" and by substituting instead the language "for the disposition of".

SECTION 23. Tennessee Code Annotated, Section 67-5-2507(b), is amended by deleting subdivision (3) in its entirety and by substituting instead the following language:

(3) No tract of land shall be sold for an amount less than the total amount of the taxes, penalty, cost and interest, unless the county legislative body, upon application, determines that it is impossible to sell the tract of land for this amount, and grants permission to offer the land for sale at some amount to be fixed by such legislative body.

SECTION 24. Tennessee Code Annotated, Section 67-5-2507(b), is further amended by deleting subdivision (5) in its entirety.

SECTION 25. Tennessee Code Annotated, Section 67-5-2507(b), is further amended by adding the following language as new subdivisions:

() The county may, upon a majority vote of its legislative body determining it in the best interests of the county to use the property for a public purpose, decide to retain ownership and possession of such property.

() This section shall not apply in any county having a metropolitan form of government and a population in excess of five hundred thousand (500,000) according to the 2010 federal census or any subsequent federal census.

SECTION 26. Tennessee Code Annotated, Section 67-5-2508(c), is amended by adding the following language as a new subdivision (3):

(3) The municipality may, upon a majority vote of its legislative body determining it in the best interests of the municipality to use the property for a public purpose, decide to retain ownership and possession of such property.

SECTION 27. Tennessee Code Annotated, Section 67-5-2508(d), is amended by adding the following language as a new subdivision (4):

(4) The county or municipality may, upon a majority vote of its legislative body determining it in the best interests of such county or municipality to use the property for a public purpose, decide to retain ownership and possession of such property. The county or municipality wishing to retain the property shall pay to the other governmental entity its pro rata share of the joint bid amount at the tax sale, upon receipt of which the other governmental entity shall execute a quitclaim deed conveying its interest in the property.

SECTION 28. Tennessee Code Annotated, Section 67-5-2509(a), is amended by deleting the language "two-year period of redemption," and by substituting instead the language "period of redemption provided in § 67-5-2702,".

SECTION 29. Tennessee Code Annotated, Section 67-5-2509, is amended by deleting subsection (b) in its entirety and by deleting the language "subsection (b)," in subdivision (d) and by substituting instead the language "§§ 67-5-2505, 67-5-2507 and 67-5-2508,".

SECTION 30. Tennessee Code Annotated, Section 67-5-2702, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) Persons entitled to redeem property may do so by paying the moneys to the clerk as required by § 67-5-2703 within one (1) year from the date of entry of the order of confirmation of sale, as evidenced by the records in the office of the clerk of the court responsible for the sale.

(b) A taxpayer may redeem property that has been previously redeemed by paying to the clerk the moneys as required by § 67-5-2703 within one (1) year from the date the property was sold, as evidenced by entry of the order of confirmation of sale. Upon the entry of the order of redemption using the procedure outlined in § 67-5-2704, the clerk shall disburse the moneys paid to redeem, plus interest at a rate of ten percent (10%) per annum computed from the date of the order of the previous redemption to the person previously redeeming as ordered by the court.

SECTION 31. Tennessee Code Annotated, Section 67-5-2704(a), is amended by inserting the following language after the fourth sentence:

In addition, the court shall direct the person entitled to redeem to pay a fee to the clerk and master or delinquent tax attorney for the preparation of the notices, motions, and orders required to give effect to the request to redeem the property.

SECTION 32. Tennessee Code Annotated, Title 67, Chapter 5, Part 27, is amended by adding the following language as a new section 67-5-2707:

67-5-2707.

(a) Following entry of the order of confirmation of sale, any "person entitled to redeem property," as defined in § 67-5-2701(a), may file a motion with the court setting forth a claim to any excess sale proceeds.

(b) A copy of such motion shall be served, in the manner prescribed by the Tennessee Rules of Civil Procedure, on all parties to the underlying action, no later than thirty (30) days prior to the hearing date of the motion.

(c) At the hearing, the court shall order that any remaining redemption period shall be terminated as to the movant and as to any other person entitled to redeem property who consents to such termination as evidenced by their signature on such order, and any excess proceeds be paid according to the following priorities to each party that establishes its claim to the proceeds:

(1) To the tax entity prosecuting the delinquent tax sale, for any remaining or subsequent outstanding taxes that are a lien against the property;

(2) To any lienholder, private or public, holding a claim against the property at the time of the tax sale, for the amount proven to be due under such lien, in accordance with priorities established by applicable law;

(3) To any lienholder, private or public, holding a claim against the property arising after the tax sale, for the amount proven to be due under such lien, in accordance with priorities established by applicable law;

(4) To any taxpayer, according to such taxpayer's interest at the time of the tax sale, provided that such taxpayer was a defendant in the underlying action, or acquired by will or intestate succession the interest in the property of a former taxpayer that was a defendant in the underlying action; and

(5) If no such motion is filed within the period set forth in § 67-5-2504(d), any such excess proceeds shall escheat to the state of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, compiled in title 66, chapter 29.

SECTION 33. Tennessee Code Annotated, Section 67-5-513(a), is amended by inserting the language "limited liability company," after the language "corporation,".

SECTION 34. Tennessee Code Annotated, Section 67-5-903(b), is amended by adding the following language at the end of the subsection:

The taxpayer shall designate on the schedule one or more individuals as owner or owners of the business, or responsible person or persons in the event of dissolution of a corporate or limited liability entity, for the purposes of § 67-5-513(a).

SECTION 35. This act shall take effect upon becoming a law, the public welfare requiring it.